Please type a plus sign (+) inside this box → +

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	08/881,965
Filing Date	May 16, 1997
First Named Inventor	Kuzma
Group Art Unit	2613
Examiner Name	Lee, R.

RECEIVED
NOV 0 7 2002
Technology Center 2600

Total Number of Pages in This Submission		
Attorney Docket Number		42390P1901R

ENCLOSURES *(check all that apply)*

- [ ] Fee Transmittal Form
  - [ ] Fee Attached
- [ ] Amendment / Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
  - [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53

- [ ] Assignment Papers *(for an Application)*
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____

- [ ] After Allowance Communication to Group
- [ ] Appeal Communication to Board of Appeals and Interferences
- [X] Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- [ ] Proprietary Information
- [ ] Status Letter
- [X] Other Enclosure(s) *(please identify below):* postcard

Remarks

It is believed no fee is due with this transmission, however, should a fee be due, please charge Blakely Sokoloff Taylor & Zafman LLP Deposit Account No. 02-2666.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Libby Hope, Reg. No. 46,774
Signature	
Date	October 30, 2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: October 30, 2002

Typed or printed name	Leah Schwenke		
Signature		Date	October 30, 2002

Reissue Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Patent Application of:)
)
        Kuzma)
)
Serial No.:   08/881,965) Art Unit: 2613
)
Filed: May 16, 1997)
) Examiner: Lee, R.
For: MULTIPLE ENCODER OUTPUT BUFFER)
       APPARATUS FOR DIFFERENTIAL CODING)
       OF VIDEO INFORMATION)

RECEIVED

NOV 0 7 2002

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Technology Center 2600

REPLY BRIEF
IN SUPPORT OF APPELLANT'S APPEAL
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Sir:

Applicant (hereafter "Appellant") hereby submits this Reply Brief in

triplicate in response to the Examiner's Answer, mailed September 24, 2002 in

the above-captioned case. Appellant respectfully requests consideration of this

Reply Brief by the Board of Patent Appeals and Interferences in this appeal and

allowance of the above-captioned patent application.

I. INTRODUCTION

This Reply Brief emphasizes some of the main points of contention relied on to support an allowance of the above-captioned case, as previously presented in the Appeal Brief; clarifies those main points of argument to address what the Appellant believes has been misconstrued by the Examiner; and responds to some of the points made in the "Response to Argument" section in the Examiner's Answer.

As an initial matter, the Appellant wishes to commend the Examiner for his careful attention to the Appeal Brief. Specifically, since claim 1 is not the subject of this appeal, it should have been omitted from Appendix A, which should only show all claims on appeal.

With respect to the Examiner's comments on Appendix B, however, where the Examiner indicates that Appendix B "is not necessary since such underlining and bracketing to the claims as shown in Appendix B should only be made in general during prosecution of the application before a Final Office action", the Appellant wishes to point out that Appendix B of the Appeal Brief was provided in accordance with MPEP §1454, which states "The claims on appeal presented in an Appeal Brief for a reissue application should include all underlining and bracketing necessary to reflect the changes made to the patent claims during the prosecution of the reissue application. In addition, any new claims added in the reissue application should be completely underlined". Therefore, it is believed that Appendix B was correctly included in the Appeal Brief.

II. ARGUMENT

A.   NONE OF THE CITED PRIOR ART REFERENCES TEACHES OR
      SUGGESTS "DYNAMICALLY CREATED AND CONFIGURED BUFFERS
      BASED ON ONE OR MORE CHARACTERISTICS OF A NETWORK".

With respect to this element, which is required by all the claims on appeal, the Examiner states, *inter alia*, on page 4 of the Examiner's Answer:

"Murakami et al discloses ... each output buffer created based upon one or more characteristics of a data communications channel (see column 17, lines 31-56 and column 19, lines 27-68)..."

The Examiner then states, *inter alia*, on page 5 of the Examiner's Answer:

"Murakami et al does not particularly disclose, though, the followings [sic]:

(a) a plurality of dynamically created output buffers coupled to the compression circuitry for storing the compressed data, each dynamically created output buffer being created and configured based upon one or more characteristics of a communication channel to be used for transmitting the encoded real time information over a network..."

First, the Appellant points out the Examiner makes contradictory statements. The Appellant wishes to address both arguments. To the extent that the Examiner believes that Murakami does disclose the "<dynamic> creation of output buffers based upon one or more characteristics of a data communications channel", the Appellant finds that Murakami does not in any way

teach or disclose that its buffers are *dynamically created*. Furthermore, to the extent that Murakami can be construed as teaching or disclosing dynamically created buffers, Murakami does not teach or disclose that such buffers are created *based on characteristics of a data communications channel*.

In support of these statements, the Appellant directs the Board's attention to the Abstract of Murakami, where it states that "[t]wo transmission buffers are provided so that transmission can occur simultaneously with writing of the encoded interframe data into the buffer, by alternating switched connections of the two buffers." While Murakami discloses the use of buffers, Murakami uses a set of predefined transmission buffers in its structure to accomplish simultaneous transmission and writing. As such, Murakami teaches away from the use of dynamically created buffers. Murakami does not teach or disclose anywhere that the two buffers are dynamically created buffers.

The Appellant further directs the Board's attention to Murakami at column 17, lines 31-56 and column 19, lines 27-68, the particular sections which the Examiner has indicated discloses dynamically created buffers based on characteristics of a data communications channel. The two referenced sections discuss the transmission buffers of Murakami. FIG. 24 is referenced, which illustrates a double buffer structure 8 having buffer 81 and buffer 82. While the contents of the buffers change as data is read to and from the buffers 81, 82, because such functionality is inherent in the use of buffers, the buffers are nevertheless *not dynamically created*, and furthermore, *not dynamically created based on characteristics of a data communications channel*.

As such, Murakami clearly does not teach or disclose the element of *dynamically created buffers based on characteristics of a data communications channel*, as required by each of the claims on appeal.

To the extent that the Examiner does not believe that Murakami discloses the "<dynamic> creation of output buffers based upon one or more characteristics of a data communications channel", the Examiner contends that Parrish exemplifies that the dynamic configuration of memories is old and well recognized in the art. While Parrish certainly teaches dynamically configurable memories, Parrish does not provide that which Murakami is missing. For one, Parrish does not teach or disclose a dynamically configurable memory that is configured *based on one or more characteristics of a data communications channel* as required by the Appellant's invention as recited by the claims.

Furthermore, Parrish does not provide the motivation for modifying its teachings of dynamically configurable memories to dynamic memories that are configured according to *one or more characteristics of a data communications channel*.

B. THE REFERENCES LACK ANY MOTIVATION FOR COMBINING WITH ONE ANOTHER

As stated in MPEP §2143.01, the mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious *unless the prior art also suggests the desirability of the combination*. (Emphasis added.) As discussed below, the lack of any of the references to suggest modification in a

way to produce the Appellant's invention as recited by the claims is problematic to the Examiner's obviousness rejections.

While Murakami discloses a video encoding and decoding apparatus; and Barberis discloses the use of multiple buffers for routing data; and Parrish discloses dynamically configurable memories, none of these references suggests a motivation for combining with another reference. For example, neither Murakami nor Barberis suggests the need for dynamically created buffers: in Murakami, two predefined buffers are used (one for transmission, one for writing), and in Barberis, a predefined number of buffers are used for the selection of a buffer that equates to the shortest distance from the selected buffer to the terminal node. In both Murakami and Barberis, the characteristics of the buffers remain constant, and there is no teaching or suggestion that the buffers need to be dynamically created. Thus, there is no motivation in Murakami or in Barberis for combination with Parrish.

Furthermore, as already addressed above, Parrish lacks any suggestion for:

1. Using the dynamically configurable memories of Parrish with a video encoding/decoding apparatus; and

2. Configuring the dynamically configurable memories of Parrish in accordance with one or more characteristics of a data communications channel.

C. EVEN IF THE REFERENCES ARE COMBINED, THE COMBINATION
    DOES NOT PRODUCE THE INVENTION AS RECITED BY THE CLAIMS,
    SINCE NONE OF THE REFERENCES TEACHES OR SUGGESTS
    DYNAMIC CREATION OF BUFFERS _BASED ON CHARACTERISTICS_
    OF A DATA COMMUNICATIONS CHANNEL.

Even if Murakami, Barberis, and Parrish are combined, the combination of

these three references at best produces a video coding/encoding apparatus that

uses dynamically created buffers. However, there is no teaching or suggestion in

any of these references as to _how_ the buffers are to be configured. As such, the

combination of these references does not produce dynamically created buffers

based on characteristics of a data communications channel.

While the Examiner states that "it is considered obvious that the memory

buffers as provided in the modified Murakami et al may be dynamically

configured as the specific type of memory allocation", the Examiner does not

substantiate his conclusion that it is also obvious to create such buffers _based on_

the characteristics of a data communications channel. The Examiner fails to

provide support that it is further obvious to dynamically create buffers based

upon characteristics of a data communications channel in the context of video

encoding/decoding.

The Examiner again makes this conclusory statement on page 10 of the

Examiner's answer. The Examiner states that although "Barberis et al does not

teach that the buffers B1-Bn are dynamically created output buffers, Parish [sic]

nevertheless shows such general use of dynamically created buffers that may

obviously be provided for the buffering system of Barberis et al and Murakami et al thereby providing substantially the same if not the same plurality of dynamically created output buffers coupled to the compression circuitry for storing the compressed data, each dynamically created output buffer being created and configured based upon one or more characteristics of a communication channel to be used for transmitting the encoded real time information over a network." In this statement, the Examiner states that Parrish teaches the general use of dynamically created buffers, but then fails to establish where it is taught that the dynamically created buffers are created *based on characteristics of a communications channel*.

On page 10 of the Examiner's Answer, the Examiner again makes such a conclusory statement. "And in view of the dynamically configuration of memories as taught by Parrish et al ..., it is submitted again that it is considered obvious to provide dynamic configuration of the modified memory buffers within Murakmi et al." As in previous statements, the Examiner fails to point out where it is taught, or how it is obvious that the dynamic buffers are created *based on characteristics of a communications channel*.

D.   THE EXAMINER APPEARS TO HAVE CONFUSED THE ELEMENT
"*SELECTION* OF AN OUTPUT BUFFER BASED UPON
CHARACTERISTICS OF A NETWORK" WITH THE ELEMENT
"DYNAMIC *CREATION* AND CONFIGURATION OF AN OUTPUT
BUFFER BASED UPON CHARACTERISTICS OF A NETWORK"

Without providing any kind of evidence as to where the Examiner finds within the references or within general knowledge, that it is obvious to dynamically *create* buffers *based upon characteristics of a data communications channel*, the Examiner proceeds to state that the *selection* of one of the dynamically created buffers that would accommodate one or more characteristics of the network better than at least one of the other buffers would have been obvious.

While the Appellants do not disagree with the Examiner that the selection of one of the dynamically created buffers that would accommodate the network better than the other buffers would be obvious, since that is why the buffers are dynamically created in the first place (i.e., so that a best one can be selected); the Examiner appears to have confused the obviousness of the element of dynamically *creating* buffers based upon characteristics of a data communications channel with the element of *selecting* one of the dynamically created buffers that accommodates characteristics of the data communications channel better than the other buffers.

This confusion is evidenced in several places of the Examiner's Answer. For instance, page 6 of the Examiner's Answer states that "...the particular *selection* of an output buffer based on characteristics of a network to provided [sic] a selected [sic] output buffer which accommodates one or more characteristics including transmission delays of the network better than at least one other or all other buffers to be transmitted onto a data communications channel of a network, in general, is old and well recognized in the art, as

exemplified by Barberis et al... It is considered obvious that such buffer _selections_ based on network characteristics of Barberis et al may be provided in place of the output buffer configuration of Murakami et al so that network requirements are met."

Furthermore, the Examiner states again on page 7 of the Examiner's Answer that "it would have been obvious to one of ordinary skill in the art, having the Murakami et al, Barberis et al, and Parrish et al references in front of him/her and the general knowledge of dynamically created output buffers and selected buffer output devices for network channel accommodations, would have had no difficulty in providing the particular _selection_ of a dynamically created output buffer based on characteristics of a network to provide a selected output buffer which accommodates one or more characteristics including transmission delays of the network better than at least one other or all other buffers to be transmitted onto a data communications channel of a network as taught in the combination of Barberis et al and Parrish et al for the buffer control as shown in Figure 24 of Murakami et al for the same well known output buffer control for network interface operations purposes as claimed."

Again, the Examiner confuses these two issues on page 10 of the Examiner's Answer, where the Examiner states that it is "considered obvious that such buffer selections based on network characteristics as taught by Barberis et al may certainly be provided in place of the output buffer configuration of Murakami et al so that the network requirements are met."

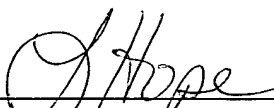## III. CONCLUSION

The Appellant again emphasizes that the Appellant does not seek here to patent the mere use of dynamically configurable memories in a video encoding/decoding environment. Instead, the Appellant seeks to patent the use of dynamically configurable memories for use in video encoding/decoding by *configuring them according to characteristics of a data communications channel used for transmitting the encoded/decoded video data*. This limitation is not taught or suggested by any of the references cited by the Examiner.

In view of the foregoing, the Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: October 30, 2002

Libby H. Hope
Attorney for Appellant
Registration Number: 46,774

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90025-1026
(303)-740-1980